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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,009	07/31/2001	Vincent Michon	F264.312-24	4809

164 7590 01/21/2004
KINNEY & LANGE, P.A.
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312 SOUTH THIRD STREET
MINNEAPOLIS, MN 55415-1002

EXAMINER

NGUYEN, KIM T

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,009

Applicant(s)

MICHON ET AL.

Examiner

Kim Nguyen

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 08/765,162.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

DETAILED ACTION

The amendment filed on November 5, 2003 (paper No. 9) has been received and considered. By this amendment, claims 91-98 have been added and claims 14-98 are now pending in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 93-94 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a) The dependency status of claim 93 is ambiguous. It is not clear if claim 93 is an independent claim or a dependent claim. If claim 93 is a dependent claim, claim 93 will be rejected under 112-4th paragraph for failing to further limit the method of claim 14. If claim 93 is an independent claim, the format for drafting claim 93 is inappropriate, and could be cause confusion in fee calculation.
 - b) Claim 94 is similarly rejected as explained in section a) above.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 14-98 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,282,167. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 14-98 disclose the same inventive features of claims 1-13 of patent 6,282,167.

Allowable Subject Matter

3. Claims 14-98 would be allowable if rewritten or amended to overcome the double patenting rejection and the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action.

4. The following is a statement of reasons for the indication of allowable subject matter:

Prior arts of record does not disclose a method for transmitting and receiving independent source signals comprising obtaining at least two independent source signals in the form of independent series of coded bits; assigning a frequency band to an OFDM signal to be transmitted, several orthogonal carrier frequencies are defined in the frequency band; breaking down the frequency band into at least two frequency subbands, each frequency subband includes a set of orthogonal carrier frequencies; assigning each frequency subband to one of the independent source signals; selectively modulating the carrier frequencies of each frequency subband with the coded bits of the corresponding source signal; grouping the modulated frequency subbands to form a modulated OFDM signal; tuning and transmitting the modulated OFDM signal as a whole; receiving the modulated signal in a receiver; extracting from the modulated OFDM signal at least one of the frequency subbands by filtering; and performing demodulation processing solely on the frequency carriers contained in the extracted subbands of the modulated OFDM signal.

Response to Arguments

5. Applicant's arguments, filed November 5, 2003, have been fully considered but are moot in view of the new ground(s) of rejection.

- a) In view of applicant's arguments, claims 14-98 are allowed over prior arts.
- b) Claims 14-98 are rejected under the judicially created doctrine of obviousness-type double patenting.
- c) Claims 93-94 are rejected under 35 U.S.C. 112, second paragraph.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

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or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED
PROCEDURE")

Hand-delivered responses should be brought to Crystal Plaza II, Arlington, VA
Second Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (703) 308-7915. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg, can be reached on (703) 308-1327. The central official fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.



Kim Nguyen
Primary Examiner
Art Unit 3713

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Date: January 16, 2003